SENEN VILOS, COMPLAINANT, VS. EXPEDITO B. BATO, SHERIFF III, RESPONDENT.

A.M. No. P-05-2007 (Formerly OCA IPI No. 03-1609-P). June 08, 2005

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PER CURIAM:

The facts which gave rise to the present administrative complaint of Senen Vilos against Expedito B. Bato, Sheriff III, Municipal Trial Court in Cities (MTCC), Branch 1, Dumaguete City, are as follows:

In a Decision rendered on October 15, 2001[1] by the MTCC of Dumaguete City, Branch 1 in Civil Case No. 90-28-5, a case for ejectment filed by Vilos, the therein defendants spouses Fermin and Maxima Nocete et al. were ordered to, among other things,

x x x

> . . . pay to plaintiff Senen Vilos representing arrears or past rentals to the land the amount equivalent to P400.00 per month representing the rentals for the reasonable use and occupation of the land effective January 1990 until the land is fully vacated by the defendants;
>
> . . . to pay to plaintiff Senen Vilos representing arrears or past rentals to the land the amount equivalent to P150.00 per month from 1984 up to January 1990;
>
> . . . to pay jointly the amount equivalent to P3,000.00 as reimbursement payments of attorneys fees to plaintiff;
>
> . . . the cost of the suit.[2]

The Decision of the MTCC was not appealed and it having become final and executory, the trial court, on motion of the judgment creditor Vilos, ordered the issuance of a Writ of Execution and one was issued dated February 18, 2002.[3]

Herein respondent MTCC Sheriff Expedito Bato, by his own admission, received a copy of the Writ of Execution on February 19, 2002.

No Progress Report on the enforcement of the Writ of Execution having been made by respondent, he was constantly reminded by Vilos' counsel to submit the same but it was not heeded.

Vilos' counsel was later furnished a copy of respondent's Return of Writ of Execution dated March 4, 2002[4] on October 10, 2002.[5] The March 4, 2002 return stated that on February 26, 2002, respondent served a copy of the Writ of Execution only upon the defendants judgment debtors Nocete spouses, the other defendants having vacated the premises and their whereabouts could no longer be determined; and that when he sought to collect from the Nocete spouses the full amount of their judgment obligation, they replied that they had neither cash nor personal or real property sufficient to satisfy the same in full but they promised to settle it "on or before April 2002 with the conformity of [Vilos]."

Vilos (hereinafter referred to as complainant), was eventually informed that all the while respondent had been collecting some amounts from the Nocetes. Complainant thereupon asked respondent to make a return of the Writ

of Execution and to remit to him his collections but respondent failed to and did not give a satisfactory explanation therefor either, prompting him to execute on February 5, 2003 an Affidavit-Complaint[6] charging respondent with ten (10) counts of Malversation of Public Funds as defined in Article 217 of the Revised Penal Code.

On receipt of a copy of the Affidavit-Complaint which the MTCC Clerk of Court forwarded to the Court Administrator, the latter directed respondent, by 1[st] Indorsement of May 8, 2003,[7] to submit his Comment thereon within ten (10) days from receipt.

By Comment of June 19, 2003,[8] respondent, in compliance with the directive of the Court Administrator, gave the following capsulized self-explanatory comment:

- Plaintiff wanted full payment and full settlement of the decision;

- Defendant could not at one time, make a full payment to satisfy the decision;

- As soon as defendant can come up with the full amount to settle and fully satisfy the decision the same shall be turned over to the plaintiff;

- Private funds cannot be subject to malversation;

- Attached are papers and documents. (Underscoring supplied)

It turned out that, indeed, respondent had been collecting various amounts on different occasions from judgment debtor Fermin Nocete since April 22, 2002 as shown in the tabulation below, which were duly receipted by respondent:

DATE AMOUNT

April 22, 2002 P10,000.00

June 3, 2002 P 2,000.00

July 2, 2002 P 2,000.00

August 6, 2002 P 2,000.00

September 5, 2002 P 2,000.00

October 11, 2002 P 2,000.00

November 5, 2002 P 2,000.00

December 7, 2002 P 2,000.00

(Undated) P 5,000.00

Undated) P 5,000.00

P39,000.00 [9]

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In a parallel move, the affidavit-complaint of complainant was lodged with the Dumaguete City Prosecutor's Office. The rollo of the case shows that in a Joint Resolution issued in I.S. Nos. 2003-107 up to 2003-116, "Senen

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Vilos, Complainant, versus Expedito Bato, Respondent," for Malversation of Public Funds, the City Prosecutor's Office found probable cause to hale respondent into court for 10 counts of misappropriation.[10] He was eventually indicted for 10 cases of Estafa.

By Resolution of this Court dated November 21, 2003,[11] the administrative complaint was referred to the Executive Judge of the Regional Trial Court (RTC) of Dumaguete City for Investigation, Report and Recommendation within sixty (60) days.

The record of the investigation conducted by Executive Judge Araceli S. Alafriz shows that respondent submitted a Counter-Affidavit[12] echoing his earlier quoted Comment. Thus, his Counter-Affidavit reads:

> I am innocent of the charge;
>
> Plaintiff Senen Vilos wanted full payment and full settlement of the decision;
>
> Defendants could not at one time, make a full payment to satisfy the decision;
>
> As soon as the defendant can come up with the full payment to settle and fully satisfy the decision the same shall be turned over to the plaintiff;
>
> Besides for the sake of argument but without admitting, private funds cannot be the subject of malversation;
>
> Attached are the Sheriff's Progress Report as annexes 1 and 2 hereto;
>
> Plaintiff also received payments even after the filing of the complaint copy of the receipts are hereto attached as annexes 3, 4, and 5.
>
> x x x (Emphasis and underscoring supplied)

In her Report and Recommendation entitled "COMPLIANCE,"[13] Judge Alafriz, on the basis of the facts of the case already reflected above, gives the following

> EVALUATION
>
> The respondent has violated the provisions of Rule 39 of the 1997 Rules of Civil Procedure on Execution. Satisfaction and Effect of Judgments, as follows:
>
> Sec. 9. Execution of judgments of money how enforced. –
> (a) Immediate payment on demand. –

x x x

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amounts to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.

Sec. 14. Return of writ of execution. – The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties. (Emphasis and underscoring

supplied in the original),

and

> RECOMMENDATION
>
> Considering this is the third offense of respondent for gross dishonesty, each involving his failure to turn over to the court the amounts collected by him from the judgment debtor in settlement of the money judgment and that the instant offense was committed by him within a short period of two (2) years from the first offense and while under investigation for a similar offense, it is respectfully recommended that respondent Expedito Bato be DISMISSED from the service.
>
> Relative to this administrative case, Criminal Case No. 16757 has been filed by the Office of the Ombudsman against respondent Bato for Estafa which is now pending before the Regional Trial Court, Branch 38, Dumaguete City. (Emphasis and underscoring in the original; italics supplied)

The OCA, by Memorandum of September 20, 2003, agrees with the investigating judge's evaluation and recommendation. So does this Court.

For from the testimonial[14] (complainant's and judgment debtor Nocete's) and documentary evidence presented by complainant during the investigation of the case, it is clear that, indeed, respondent, who opted not to take the witness stand, failed to comply with his duty, as mandated by the Rules, as an officer charged to enforce the writ of execution, to make a report to the court every thirty (30) days on the proceedings taken on the writ of execution until the judgment is fully satisfied or the writ's effectivity expires. Worse, he failed to remit or turn over the collections he had been receiving since April 22, 2002, with the exception of his deposit to the fiduciary account of the clerk of court the amounts of P2,000.00 on January 16, 2003, P2,000.00 on February 3, 2003, and P2,000.00 on March 28, 2003, and his remittance of the amount of P9,000.00 to complainant[15] on March 31, 2004 long after the present administrative case was filed in early 2003.

Respondent's above-quoted Comment to the Complaint, which he essentially reiterated in his Counter-Affidavit, is in fact a virtual mea culpa. And it indicates how callous, impervious he is to any complaint, administrative or criminal.

This Court's records show that respondent was previously twice faulted for the same act in two separate administrative matters, to wit:

> - Administrative Matter OCA IPI-99-689-P (Tingabngab vs. Sheriff Expedito Bato) for GROSS DISHONESTY
>
> Complaint Respondent Sheriff did not turn over to the judgment debtor nor to the court the amount of P10,00000 he collected in settlement of the money judgment. He also failed to make a Return of the Writ of Execution as well as the periodic reports every thirty (30) days until writ was fully satisfied.
>
> SANCTION: Respondent was ADMONISHED and REMINDED that a repetition of similar act in the future shall be dealt with more severely. (Court's Resolution dated 06 February 2002).
>
> - Administrative Matter No. P-02-1592 [formerly OCA IPI-01-1069-P] (Alpeche vs. Sheriff Expedito Bato) for Misconduct and Malversation of Funds
>
> Complaint:
>
> Respondent Sheriff did not turn over to complainant nor to the court the amount of P28,740.00 which respondent received in settlement of the money judgment. He also demanded from complainant the amount of P3,200.00 as expenses for the execution of judgment. Respondent also failed to make a return of the writ of

> execution after he received the payment. When confronted by the judge, respondent cannot produce the money immediately and requested for time to turn over the same.
>
> SANCTION:
>
> Respondent was SUSPENDED for SIX (6) MONTHS without pay with stern warning that a repetition of the same offense shall be dealt with more severely. (Decision dated 16 October 2003-Third Division).

It having been indubitably established that respondent is inefficient, incorrigible, and an inveterate dishonest employee, he does not deserve to stay a moment longer in, and further stain the image of, the judiciary. This time his immediate dismissal from the service should not elude him.

WHEREFORE, for gross dishonesty, grave misconduct and conduct prejudicial to the best interest of the public, respondent, Expedito B. Bato, Sheriff III, Municipal Trial Court in Cities, Branch 1, Dumaguete City, is hereby DISMISSED from the service with forfeiture of all retirement benefits except accrued leave and with prejudice to re-employment in the government, including government-owned or controlled corporations.

He is further ORDERED to remit to complainant, Senen Vilos, his still unremitted collections from the judgment debtors in Civil Case No. 90-28-5 of the MTCC, Dumaguete City.

The OCA is ordered to coordinate with the prosecution arm of the government to ensure the expeditious prosecution of the estafa cases filed against respondent.

SO ORDERED.

Davide, Jr., C.J., Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.
Puno, J., on official leave.

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[1] Rollo at 005-008.

[2] Id. at 008.

[3] Id. at 009-010.

[4] Id. at 011.

[5] Ibid.

[6] Id. at 002-004.

[7] Id. at 019.

[8] Id. at 020.

[9] Affidavit of Nocete, supra.

[10] Id. at 031-032.

[11] Id. at 039.

[12] Id. at 056.

[13] Id. at 063-065.

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[14] Vide Transcript of Stenographic Notes (TSN), May 20, 2004, id. at 103-110.

[15] Id. at 110.

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